

PT 98-75

Tax Type: PROPERTY TAX

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE CATHOLIC
BISHOP OF CHICAGO
(ARCHDIOCESE OF CHICAGO),
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

**No. 98-PT-0045
(96-16-0980)**

**Real Estate Tax Exemption for
1996 Assessment Year**

P.I.N: 14-06-200-016

Cook County Parcel

**Alan I. Marcus
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Patrick E. Mahoney of Patrick E. Mahoney and Associates on behalf of the Catholic Bishop of Chicago.

SYNOPSIS: This proceeding raises the limited issue of whether those portions of real estate identified by Cook County Parcel Index Number 14-06-200-016 (hereinafter the "subject property" or the "subject parcel") qualifies for exemption under 35 ILCS 200/15-40,¹ wherein

1. In People ex. rel. Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption necessarily depends on the statutory provisions in force during the time for which the exemption is claimed. This applicant seeks exemption from 1996 real estate taxes. Therefore, the applicable provisions are those found in the Property Tax Code, 35 ILCS 200/1 *et seq.*

"[a]ll property used exclusively for religious purposes ... not leased or otherwise used with a view to profit" is exempted from real estate taxation.

The controversy arises as follows:

The Catholic Bishop of Chicago (hereinafter the "applicant" or the "Archdiocese") filed a Real Estate Tax Exemption Complaint with the Cook County Board of (Tax) Appeals (hereinafter the "Board") on October 10, 1996. The Board reviewed applicant's complaint and subsequently recommended to the Illinois Department of Revenue (hereinafter the "Department") that the entire subject parcel be exempt. (Dept. Group Ex. No. 1, Doc. B).

The Department partially accepted this recommendation by issuing a determination dated February 20, 1998. Said determination granted exemption to all portions of the subject property except the five apartments used as the lay staff's residence, the building manager's apartment and a proportionate amount of the underlying land. (Dept. Ex. No. 2).

Applicant then filed a timely request for hearing as to this partial denial on March 4, 1998 (Dept. Ex. No. 3) and later presented evidence at a formal evidentiary hearing. Following submission of all evidence and a careful review of the record, it is recommended that the Department's determination be affirmed.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein, namely that the five apartments used as the lay staff's residence, the building manager's apartment and a proportionate amount of the underlying land were not in exempt use during 1996, are established by the admission into evidence of Dept. Ex. No.
- 2.

2. Applicant is a corporation sole created pursuant to a corporate charter issued by the General Assembly on February 20, 1801. Applicant Ex. No. 3; Tr. p. 9.
3. The subject property, which applicant obtained ownership of via a warranty deed dated April 16, 1971, is located at 1950 W. Granville, Chicago, IL 60660. It is improved with a 3-story building that occupies 125' x 25' of total ground area. Dept. Group Ex. No. 1, Doc. B; Applicant Ex. Nos. 12, 13, 14, 15, 16.
4. The improvement, commonly known as the Brian O. Shannon Apartments (hereinafter the "Apartments"), is used as a home for the disabled. Dept. Group Ex. No. 1, Doc. B.
5. Misericordia Home, (hereinafter "Misericordia"), an organization in which applicant is the sole voting member,² operates the Apartments pursuant to long-term care licenses issued by the Illinois Department of Public Health. Applicant Ex. Nos. 1, 3; Applicant Group Ex. No. 6; Tr. pp. 16-17.

2. For further details about Misericordia's organizational structure, and its exempt status for purposes of federal income, Illinois Use and related taxes, *see*: (1) Applicant Ex. Nos. 1 (by-laws of Misericordia Home listing the applicant, Catholic Bishop of Chicago, a corporation sole, as sole voting member; (2) Applicant Ex. No. 2 (Internal Revenue Service Letter Ruling, originally issued on March 25, 1946, that includes Misericordia in the group of "agencies and instrumentalities and all educational, charitable and religious institutions operated, supervised or controlled by or in connection with the Roman Catholic Church in the United States" that are exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code); and (3) Applicant Ex. No. 4 (Departmental certificate, issued on June 6, 1997, finding Misericordia to be "organized and operated exclusively for charitable purposes," and therefore exempt from payment of Illinois Use and related sales taxes.

6. The Apartments housed 41 developmentally disabled individuals³ during 1996. It also contained residential facilities for seven lay staff members. Tr. pp. 16, 18-19.
7. The residential facilities for lay staff consisted of five separate one or two bedroom rental units,⁴ each of which was completely furnished. *Id.*
8. The lay staff members each paid \$350.00 per month in rent, for which they received the right to occupy their respective units, free utilities and one meal at dinnertime six nights per week. Tr. pp. 19-20.
9. Applicant charged the lay staff rent in order to provide them with an incentive to take care of their units. Tr. p. 22.

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the entire subject property from 1996 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that the lay staff's residences, the building manager's apartment and a proportionate amount of the underlying land do not qualify for exemption under 35 ILCS 200/15-40 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

3. 36 of these individuals were funded by various State agencies, including the Departments of Children and Family Services, Mental Health and Developmental Disabilities and Public Aid. The other 5 were privately funded. Applicant Group Ex. No. 7; Tr. pp. 16, 18.

4. The record does establish that all five units were located within the Apartments. However, it contains no information indicating whether these units were located on any

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code 35 **ILCS** 200/1-3 *et seq.* The provisions of that statute that govern disposition of the instant proceeding are found in Section 200/15-40, wherein "[a]ll property *used* exclusively for religious purposes ... not leased or otherwise used with a view to profit" is exempted from real estate taxation. (Emphasis added).

Prior to 1909, it was a requirement for the exemption of property used for religious purposes that it be owned by the organization that claimed the exemption. Since that time however, a statutory amendment (which the emphasized language demonstrates is still in effect)

particular floor or interspersed throughout the complex. Nor does it specify how many of the five

eliminated that requirement in cases that do not involve parsonages. The test of exemption then became (and, with the exemption of parsonages, still remains) use and not ownership. People ex rel. Bracher v. Salvation Army, 305 Ill. 545 (1922). *See also*, American Nat'l Bank and Trust Co. v. Dep't of Revenue, 242 Ill. App.3d 716 (2nd Dist. 1993).

In this case, the Department's denial as to the five apartments used as the lay staff's residence, the building manager's apartment and a proportionate amount of the underlying land (hereinafter collectively referred to as the "portions in dispute"), was based solely on lack of exempt use. Our courts have issued a line of decisions holding that areas, such as the ones currently in dispute, do not qualify for exemption unless one of two conditions is met: first, that the resident-employee performs an exempt function, such as educational or religious duties, and is required by those same exempt duties to live in the residence; or, second, that the resident-employee performs his duties in furtherance of the institution's exempt purpose in the building. McKenzie v. Johnson, 98 Ill.2d 89, 99 (1983); Benedictine Sisters of the Sacred Heart v. Department of Revenue, 155 Ill. App.3d 325 (2nd Dist. 1987); Lutheran Child and Family Services of Illinois v. Department of Revenue, 160 Ill. App.3d 420 (2nd Dist. 1987); Cantigny Trust v. Department of Revenue, 171 Ill. App. 3d 1082 (2nd Dist. 1988); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill. App.3d 858 (1989).

The present record does not contain sufficient evidence to establish conformity with the above criteria. Applicant's primary witness, Mark Moran, testified that seven lay support staff persons were employed at the subject property during 1996. (Tr. p. 18) Mr. Moran further testified that such persons resided in five rental units located within the Apartments. (Tr. p. 19). He did not, however, describe their job duties or indicate that any or all of the lay support staff

units contained one, rather than two, bedrooms.

were required to live at the Apartments. Nor did he mention anything whatsoever about the building manager's residence.

Applicant's attorney attempted to cure these deficiencies in his closing statement by stating that the lay support staff are responsible for handling any emergencies that may arise in the middle of the night. (Tr. p. 34). However, this statement was not made under oath. Therefore, it can not be afforded the same probative value as sworn testimony or other appropriate forms of evidence.⁵

Much of applicant's evidence was attuned to proving that there was no profit made from any rental amounts charged to the lay staff. (Tr. pp. 19-28; Applicant Ex. Nos. 5, 7,8). This evidence is technically relevant to the present case because it seeks to establish that the portions in dispute were not "leased or otherwise used with a view to profit" in violation of the plain meaning of Section 200/15-40. However, establishing conformity with this prohibition is but one aspect of a larger burden of proof that applicant did not sustain.

The applicable regulatory legislation does not alter the above conclusions. That legislation, and the regulations implementing it, are found in the Community Living Facilities Licensing Act, 210 **ILCS** 35/1 *et seq.* (hereinafter the "Act") and The Community Living Facilities Code, 77 Ill. Admin. Code Ch. I, §370.110 *et seq* (hereinafter the "Code") .

5. *See also*, Rule of Professional Conduct 3.7, which governs the attorney's capacity to act as a witness in cases wherein he is also representing a client. In substance, this rule prohibits a lawyer from accepting or continuing employment in pending litigation if the lawyer knows or reasonably should know that the lawyer may be called as a witness on behalf of the client.

This record does not contain even the remotest suggestion that applicant's attorney transgressed this Rule. However, the overall record does warrant discounting the above-cited excerpt of the attorney's closing statement on grounds that it was not an accurate summary of previously-admitted evidence.

Both the Act and the Code establish certain standards which facilities such as the Apartments must meet in order to receive and maintain licensure from the Department of Public Health. *See*, 210 **ILCS** 35/5; 77 Ill. Admin. Code Ch. I, §§370.110-370.220, 370.1010. These standards do include certain staffing requirements. *See*, 77 Ill. Admin. Code Ch. I, §§370.710, 370.1620, 370.2270, 370.2670, 370.Appendix A. However, nothing contained therein *requires* that staff members live at the facility. Accordingly, for all the above-stated reasons, I conclude that the lay staff members resided in their respective rental units as a matter of convenience rather than necessity. Lutheran Child and Family Services of Illinois v. Dept. of Revenue, 160 Ill. App.3d 420, 426-427 (2nd Dist. 1987). Therefore, the Department's determination which denied exemption to such portions, and the building manager's residence, should be affirmed.

WHEREFORE, for all the aforestated reasons, it is my recommendation that the portions in dispute, consisting of: (1) the five lay staff rental units; (2) the building manager's residence; and (3) an appropriate amount of the ground underlying real estate identified by Cook County Parcel Index Number 14-06-200-016 not be exempt from 1996 real estate taxes.

November 23, 1998

Date

Alan I. Marcus
Administrative Law Judge